

Message Text

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ACTION L-03

INFO OCT-01 IO-13 ISO-00 FEA-01 ACDA-07 AGR-05 AID-05

CEA-01 CEQ-01 CG-00 CIAE-00 CIEP-01 COME-00 DLOS-04

DODE-00 DOTE-00 EB-07 EPA-01 ERDA-05 FMC-01 TRSE-00

H-02 INR-07 INT-05 JUSE-00 NSAE-00 NSC-05 NSF-01

OES-06 OMB-01 PA-01 PM-04 PRS-01 SP-02 SS-15 USIA-06

SAL-01 AF-08 ARA-06 EA-07 EUR-12 NEA-10 /156 W

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R 031705Z MAY 76

FM USMISSION USUN NEW YORK

TO SECSTATE WASHDC 7264

C O N F I D E N T I A L USUN 1895

FROM LOS DEL

E.O. 11652: GDS

TAGS: PLOS

SUBJECT: LOS: COMMITTEE I - GUARANTEED ACCESS TO DEEP SEABED

REF: STATE 103976

1. REFTTEL ASKS FOR ANALYSIS OF HOW REVISED SNT IN
COMMITTEE I PROTECTS US POSITION ON ACCESS.

2. TOTAL TREATY SYSTEM FOR GRANTING OF RIGHTS MUST BE
EXAMINED TO OBTAIN FULL PICTURE OF ACCESS PROTECTION
AND ALL ARTICLES NOT YET PUBLISHED. MOST OBVIOUS
PROTECTION, HOWEVER, IS IN PARAGRAPH 9A) OF ANNEX I

WHICH REQUIRES THE AUTHORITY TO CONCLUDE A CONTRACT
FOR FULLY INTEGRATED OPERATIONS WITH A PROPERLY
QUALIFIED APPLICANT WHO AHS COMPLIED WITH PARAGRAPH 8.
THIS APPLIES TO ALL ORGANS OF THE AUTHORITY. THUS,
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UNDER PARA. 8 THE AUTHORITY IS ONLY REQUIRED TO ENTER

INTO NEGOTIATIONS WITH A VIEW TO CONCLUDING A CONTRACT BECAUSE THE REQUIREMENT TO CONCLUDE WAS TO BE LOCATED ELSEWHERE TO PROVIDE COSMETIC FACE SAVER FOR GP OF 77, -458:3 8(A) GIVES THE EXCLUSIVE GROUNDS FOR REFUSING TO NEGOTIATE A CONTRACT. THE BASIC TERMS AND CONDITIONS OF THE CONTRACT ARE SPECIFIED ELSEWHERE IN THE ANNEX. THE OBLIGATION TO CONCLUDE THE CONTRACT UNDER 9(A) IS CONTINGENT ONLY ON THE ARTICLE 8 PROCEDURE. WE SEE NO RPT NO PRACTICAL DIFFERENCE BETWEEN AN OBLIGATION TO CONCLUDE A CONTRACT WHEN SPECIFIED CRITERIA HAVE BEEN MET AND AN OBLIGATION NOT TO REFUSE IF SPECIFIED CRITERIA HAVE BEEN MET.

3. WE DO NOT RPT NOT SEE THE ARTICLE 28(IX) TAKES AWAY FROM FOREGOING INTERPRETATION. IF ANYTHING, IT SEEMS TO US TO BOLSTER ARGUMENT. 28(IX) PROVIDES THAT "THE COUNCIL SHALL APPROVE" PLANS OF WORK DRAWN UP IN ACCORDANCE WITH PARAGRAPH 2 OF ARTICLE 33 WHICH IN TURN CLOSES THE LOOP BY INCORPORATING ANNEX I BY REFERENCE. THE LIST IN ARTICLE 28 IS A SET OF MANDATORY, NOT PERMISSIVE, COUNCIL ACTIONS. THE POSSIBILITY OF A DECISION TO DO NOTHING IS WRITTEN INTO APPROPRIATE SUB-ITEMS, EG. (XI). IF NECESSARY, WE COULD PROBABLY INSERT WORDS LIKE "NECESSARY" AND "APPROPRIATE" IN SUBITEM (V) AND (XIV) TO STRESS THIS POINT AT NEXT SESSION. MOREOVER, THE FACT THAT THE REFERENCE IS TO THE WORK PLAN EMPHASIZES THAT THE NATURE OF THE COUNCIL ACTION IS TO ENSURE COMPLIANCE. IN ADDITION, FROM THE POINT OF VIEW OF SECURITY OF TENURE, THE FORMALITY OF COUNCIL APPROVAL IS HIGHLY DESIRABLE.

4. IT IS OUR ASSESSMENT THAT THE DECISION OF THE COUNCIL IN THIS SYSTEM IS PRO FORMA TO ENSURE CONVENTION REQUIREMENTS HAVE BEEN MET BY THE WORK PLAN IN ALL CASES EXCEPT WHEN AN ARTICLE 9 ISSUE IS BEFORE THE COUNCIL. IN THOSE CASES, HOWEVER, A WEIGHTED VOTE WOULD BE TAKEN ON THE ARTICLE 9 ISSUE ITSELF AND THE CONTRACT WOULD BE AWARDED ROUTINELY AFTER THE DECISION UNDER ARTICLE 9.

5. WHEN WE HAVE RECEIVED ALL OF THE TEXTS INCLUDING
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THE SPECIALIZED TECHNICAL COMMISSIONS AND THE DISPUTE SETTLEMENT ARTICLES, WE WILL DRAW UP A MORE THOROUGH ANALYSIS OF THE ENTIRE DECISION-MAKING SYSTEM AS IT IMPACTS ON THE QUESTION OF ACCESS.
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